

**CALIFORNIA COASTAL COMMISSION**

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STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 2-01-022-A1

APPLICANTS: Gerry and Kathryn Cirincione-Coles

PROJECT LOCATION: 12990 Sir Francis Drake Blvd., Inverness, Marin County, APN 112-042-07 (formerly 112-042-03).

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a two-bedroom single-family residence, septic system, and drainage trench.

DESCRIPTION OF AMENDMENT: Applicants request an amendment to CDP 250-79 to convert the storage space above an existing attached garage into one bedroom with a bathroom and a separate storage room, and after-the-fact authorization for the addition of 120 square feet of storage space and a stairway.

LOCAL APPROVALS RECEIVED: Marin County Local Agency Review approval.

SUBSTANTIVE FILE DOCUMENTS: See Appendix A

1.0 EXECUTIVE SUMMARY

The staff recommends that the Commission **approve** with conditions the requested coastal development permit amendment. Gerry and Kathryn Cirincione-Coles seek an amendment to Coastal Development Permit No. 250-79, which authorized construction of a two-story, two-bedroom single-family residence on Sir Francis Drake Boulevard in Inverness in Marin County.¹ The amendment request seeks authorization to convert the storage space above the existing

¹ CDP file No. 250-79 has been renumbered to 2-01-022 for record keeping purposes. Thus, the amendment to CDP No. 250-79 has been assigned the number 2-01-022-A1.

attached garage into one bedroom with a bathroom and separate a storage room, and after-the-fact authorization for the addition of 120 square feet of storage space and a stairway. The proposed amendment would result in the addition of one bedroom to an already existing two-bedroom residence.

Commission staff recommends approval of the permit with conditions to mitigate impacts related to water quality, environmentally sensitive habitat areas, and geologic hazards. To protect the water quality of Tomales Bay and other environmentally sensitive habitat areas, the staff recommends **Special Condition 1**, which requires the submittal of an Individual Wastewater System Monitoring Plan for the review and approval of the Executive Director. Commission staff also recommend **Special Condition 2** to protect water quality, requiring the applicants to record a future development deed restriction, which requires a coastal development permit or a permit amendment for all future development on the subject parcel that might otherwise be exempt from coastal permits. Since the subject parcel is located in an area subject to flooding, the staff also recommends **Special Condition 3** requiring the applicant to record an assumption of risk, waiver of liability, and indemnity agreement.

The staff thus recommends that the Commission find the proposed project, as conditioned, is consistent with the certified Marin County LCP and with the public access and public recreation policies of Chapter 3 of the Coastal Act.

2.0 STAFF NOTES

2.1 Subject Amendment and Standard of Review

On November 15, 1979, the Coastal Commission granted CDP 250-79 to the applicants, Gerry and Kathryn Cirincione-Coles, for a two-bedroom single-family residence, septic system, and drainage trench (Exhibit 8). In its action to approve the original permit, the Commission imposed six special conditions. These conditions included (1) a requirement that the applicants record a document offering to dedicate a public access easement over public trust lands on the subject property; (2) a requirement for submittal of landscape plans to mitigate visual impacts; (3) a requirement that the proposed septic system conform to the recommendations of the Regional Water Quality Control Board; (4) a requirement that all utility connections be underground; (5) a requirement that the applicant install water-saving devices; and (6) a requirement that construction begin within 12 months and be completed within 18 months of the date of Commission action, and that construction subsequent to such period shall require a new or extended coastal permit. In May 1981, the Commission approved a time extension for completion of the project. Subsequent to the Commission's action on the permit, a 1990 Litigation Settlement Agreement between the applicants, the State Lands Commission, the Coastal Commission, and Marin County resulted in about one acre of the site being granted to State Lands in fee. As a result, the public access easement offered by the applicants pursuant to

Special Condition No. 1 of the permit, and accepted for management in 1983 by the County of Marin, was rescinded, as the easement was located on the property granted to State Lands.

The proposed development is located between the first public road and the sea, in an area that is within Marin County's primary permit jurisdiction under its certified Local Coastal Program (LCP) (Exhibit 1). Pursuant to the 1990 Litigation Settlement Agreement, which established that the Cirincione-Coles property does not constitute tidelands or lands within the public trust, the site is not within the original jurisdiction of the Coastal Commission. Thus, any coastal permit for new development at this location would be considered by the County (and appealable to the Commission). However, the proposed project seeks to modify a development approved by the Coastal Commission prior to the certification of the LCP, and thus constitutes an amendment to the original coastal development permit, rather than a permit for new development. The project is therefore before the Commission and not the County because only the Commission can amend a previously granted Commission permit.

The applicants have questioned the Commission's authority to administer a coastal permit amendment for development on their property, since the Litigation Settlement Agreement states that their property is not within the original jurisdiction of the Coastal Commission. However, the Litigation Settlement Agreement also provides that the Agreement shall not affect the authority of any agency having jurisdiction based on statute, administrative regulation, or law.

Section 3.3.9 of the 1990 Litigation Settlement Agreement specifically states that:

The findings by SLC are not intended to and do not affect the authority or jurisdiction or extent of regulation or control, if any, of any agency having authority or jurisdiction over the settlement area based on statute, administrative regulation, or law.

Section 0.23.5 states in relevant part that:

Within the Cirincione-Coles' Fee, the Cirincione-Coles will be able to accomplish all activities that are consistent with the Marin County Local Coastal Program Unit II and all other applicable local, state and federal statutes, rules or regulations.

Section 11.1 of the Litigation Settlement Agreement also states in relevant part that:

It is also expressly understood and agreed that this Agreement shall not be construed and is not intended to affect the powers, authority or jurisdiction or extent of regulation or control of any other regulatory agency having power, authority or jurisdiction over the settlement area based on statute, administrative regulation or law.

Thus, the Settlement Agreement provides for the review of the proposed permit amendment by the Coastal Commission in accordance with the authority granted to the Commission under the

Coastal Act. In accordance with Coastal Act Section 30604(b) and (c), the standards of review for the proposed development with the proposed amendment are the LCP and the public access and public recreation policies of Chapter 3 of the Coastal Act.

3.0 STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

3.1 Motion

I move that the Commission approve the proposed amendment to Coastal Development Permit No. 250-79 pursuant to the staff recommendation.

3.2 Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

3.3 Resolution to Approve Permit Amendment

The Commission hereby approves the coastal development permit amendment on the grounds that the development as amended and subject to conditions, will be in conformity with the policies of the Marin County Certified Local Coastal Program and with the Public Access and Public Recreation policies of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

4.0 STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

5.0 SPECIAL CONDITIONS

All previous permit conditions of CDP 250-79 remain effective and unchanged. The Commission adds four new special conditions, as described below.

The Commission grants this permit amendment subject to the following additional special conditions:

1. Septic System Monitoring and Reporting

- A. *Prior to issuance of the coastal development permit amendment*, the applicants shall submit, for the review and approval of the Executive Director, an Individual Wastewater System Monitoring Plan. The plan shall be prepared by a qualified professional and shall provide for annual inspection and testing of the wastewater treatment system to ensure that the system is functioning properly to protect the biological productivity of Tomales Bay and public health and safety. The plan shall provide for the following:
 1. Recording of wastewater flow based on water meter readings, pump event counters, elapsed time meters or other approved methods;
 2. Inspection and recording of water levels in monitoring wells in the disposal field;
 3. Water quality testing of selected water samples taken from points in the treatment process, from monitoring wells, or from surface streams or drainages; typical water quality parameters to be analyzed for may include total and fecal coliform, nitrate, biochemical oxygen demand (BOD), and suspended solids;
 4. Inspection and observation of pump operation or other mechanical equipment; and,
 5. General inspection of treatment and disposal area for evidence of seepage, effluent surfacing, erosion or other indicators of system malfunction.
- B. The permittee shall ensure that monitoring is conducted annually. However, the Executive Director may require an increase to the monitoring frequency if the Executive

Director determines that the system is not functioning satisfactorily to ensure protection of the biological productivity of Tomales Bay and public health and safety.

- C. All required monitoring and inspection shall be conducted by either a registered civil engineer or a registered environmental health specialist. All costs associated with monitoring and reporting shall be paid by the permittees or their successors or assigns.
- D. The permittee shall report the results of the required monitoring and inspection to the Executive Director in writing by July 1st for the preceding 12-month period ending on May 31st. The report shall be signed by the registered civil engineer or the registered environmental health specialist responsible for the monitoring and inspection. Notwithstanding the annual report, the Executive Director shall be notified immediately of any significant system problems observed during monitoring or inspection or at any other time.
- E. If at any time monitoring or inspection demonstrates that the system is not functioning satisfactorily to ensure protection of the biological productivity of Tomales Bay and public health and safety, the applicant shall immediately notify the Executive Director and shall provide to the Executive Director a listing of appropriate corrective measures recommended by the registered civil engineer or the registered environmental health specialist responsible for the monitoring and inspection. If the recommended corrective measures constitute development as defined by Section 30106 of the Coastal Act, an amendment to this permit shall be required unless the Executive Director determines no amendment is legally required. The permittees or their successors or assigns shall be responsible for the timely implementation of all corrective measures that are approved by the Commission or the Executive Director.

2. Future Development Deed Restriction

- A. This permit is only for the development described in Coastal Development Permit Amendment No. 2-01-022-A1. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply. Accordingly, any future improvements to the single family residence authorized by Coastal Development Permit No. 250-79 as amended by permit amendment 2-01-022-A1, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require a further amendment to Permit No. 250-79 from the Commission or shall require an additional coastal development permit from Marin County.
- B. ***Prior to the issuance of the coastal development permit amendment***, the applicants shall execute and record a deed restriction in a form and content acceptable to the

Executive Director, reflecting the above restrictions on development. The deed restriction shall include a legal description of the applicants' entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3. Assumption of Risk, Waiver of Liability, and Indemnity Agreement.

- A. By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agent, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. ***Prior to issuance of the coastal development permit amendment***, the applicants as landowners shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, incorporating all of the above terms in subsection A of this condition. The deed restriction shall include a legal description of the applicants' entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

4. Condition Compliance.

Within 90 days of Commission action on this CDP amendment, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

6.0 FINDINGS AND DECLARATIONS

6.1 Project Description and Location

The site is an approximately 3.91-acre parcel located on the Bay side of Sir Francis Drake Boulevard and Camino Del Mar in Inverness, on the western side of Tomales Bay (Exhibits 1 & 2). The parcel is relatively flat with a steep uphill slope along the north side of the property. On the eastern boundary of the site is a parcel now owned by State Lands (originally owned by the applicants as part of the subject parcel but deeded to the State as part of a settlement agreement in 1990) that contains marshland. Just east of the State Lands parcel is a popular public recreation area, Chicken Ranch Beach, which fronts on Tomales Bay. Third Valley Creek, which runs parallel to Sir Francis Drake Blvd., borders the property on the south, and supports riparian habitat that serves as a visual shield between the property and the road. Another creek runs through the northern portion of the site. Both creeks drain into Tomales Bay (Exhibit 3).

The site contains a single-family residence with an attached garage approved by the Commission in 1979 via CDP No. 250-79, and an accessory structure—a barn with storage space and a workshop—approved by the County in 1985.

Applicants request an amendment to CDP 250-79 to convert the storage space above an existing attached garage into a 405-square-foot bedroom with a bathroom and a separate 195-square-foot storage room as well as after-the-fact authorization for the addition of 120 square feet of storage space and a stairway (Exhibits 4-7). The conversion would result in a total of three bedrooms.

6.2 Background

In 1979 the Coastal Commission approved Coastal Permit 250-79 for construction of a single-family residence with 2,140 square feet of internal floor space, a septic system and a drainage trench (Exhibit 8). In 1981, the Commission approved a time-extension request to extend the period of time during which the project could be commenced.

In 1981 the Commission certified the Southern Marin County (Unit 1) LCP and the County assumed permit-issuing authority for that portion of its coastal zone. In 1982 the Commission certified the Northern Marin County (Unit 2) LCP and the County assumed coastal permit-issuing authority for that portion of its coastal zone; the subject property is located within Unit 2.

In July of 1984, the Commission approved CDP 2-84-09 for construction of a berm for flood control protection involving placement of 3,000 cubic yards of fill on the subject site. At that time, the portion of the site within which the berm was located was considered to be in the Coastal Commission's area of original permit jurisdiction.

In April of 1985, the Marin County Planning Commission approved with conditions Coastal Permit No. 84-54/Design Review No. 84-128 to allow the removal of an existing accessory structure and the construction of a new accessory structure to be used as a studio-workshop and storage building, as well as Use Permit No. 85-10 to allow the detached accessory structure to exceed the 15-foot (one story) height requirement of the Marin County Code, but not to exceed two stories or 24'6". The accessory structure is two stories, 24'6" in height, and comprises 2,034 square feet.

In 1990, a Litigation Settlement Agreement was reached between the applicants, the State Lands Commission, the Coastal Commission, and Marin County. As part of this agreement, the applicants agreed to grant approximately one acre of their property to State Lands in fee. This is the portion of the site that contained the public access easement offered pursuant to Coastal Permit 250-79 and accepted for management by the County; the offer has since been rescinded.

Sometime in 1993, without benefit of a coastal development permit, the applicants converted the storage space above the attached garage to two guest units, constructed an additional 120 square feet of storage space and a stairway, and converted the existing residential use of the property to commercial, visitor-serving use. There were a total of three guest units on the site—two above the garage, and one in the main residence—along with a bedroom for the owners' use. The site was known as the Sandy Cove Inn.

The applicants applied for an amendment in September of 2000, seeking after-the-fact authorization for (1) remodeling of the storage space above an existing attached garage into two guest units; (2) the addition of 120 square feet of storage and a stairway; and (3) conversion from residential use to commercial, visitor-serving use of the residence; plus (4) construction of a new, expanded septic system. The applicants subsequently withdrew this amendment request in May of 2001 and ceased to operate the Sandy Cove Inn.

The applicants submitted a new permit amendment on August 31, 2001 to convert the storage space above the existing attached garage that had previously been converted to two guest units into one bedroom with a bathroom and a separate storage room as well as after-the-fact authorization for the addition of 120 square feet of storage space and a stairway (Exhibit 9).

6.3 Environmentally Sensitive Habitat Areas and Water Quality

The project site is located approximately 500 feet from Tomales Bay. Tomales Bay is within the Gulf of the Farallones National Marine Sanctuary, one of four national marine sanctuaries in California and one of thirteen in the nation. The Sanctuary was designated in 1981 to protect and manage the 1,255 square miles encompassing the Gulf of the Farallones, Bodega Bay, Tomales Bay, Drakes Bay, Bolinas Bay, Estero San Antonio, Estero de Americano, Duxbury Reef, and Bolinas Lagoon. The Marin LCP emphasizes the importance of Tomales Bay on many levels. It provides important habitat for birds, marine mammals and over 1,000 species of invertebrates.

In addition, sharks and rays spawn in the Bay. The Bay also supports a significant aquaculture industry. Protecting the water quality and biological productivity of Tomales Bay is essential to preserving the Bay and the coastal resources it supports, and is a major goal of the County's LCP.

Runoff from the site drains into the Bay via two drainage courses that cross the property: Third Valley Creek and a drainage course known as Channel A (Exhibit 3). Third Valley Creek, adjacent to Sir Francis Drake Boulevard, flows through two culverts that pass under the road, and runs adjacent to the southern boundary of the project site. The creek drains into Tomales Bay at Chicken Ranch Beach. Pursuant to CDP No. 2-84-09, a constructed berm separates the creek bed from the project site to prevent flooding of the property. Prominent vegetation along the riparian corridor includes alders, willows, and blackberry. The Cirincione-Coles' residence and garage are approximately 90 feet from the edge of the riparian corridor of Third Valley Creek. Channel A, located in the northern portion of the property, conducts water from uphill and offsite to Tomales Bay. The residence is located approximately seven feet from Channel A. The lower portion of this drainage, known as Channel B, runs across State Lands' property into Tomales Bay and is tidally influenced. A large depression bounded to the south by the raised trail and adjacent to the State Lands property is quite wet in the winter, and supports large blackberry hummocks. Commission staff biologist John Dixon visited the site on January 22, 2001. Based on observations made, Dr. Dixon determined that the entire property is within a drainage area and is probably relatively wet during the winter months. In addition, there are two brackish marsh areas located to the east of the site on the area deeded to State Lands.

The proposed development does not include the construction of new structures or any changes to the exterior of the existing structure (except for a new stairway), but would result in the addition of a bedroom and bathroom to the two-bedroom residence. Adding a bedroom to the existing residence raises the question of whether the septic system is adequate to serve a third bedroom.

According to the Marin County LCP, the shoreline of Tomales Bay is perhaps the most sensitive area with development potential in the Unit 2 Coastal Zone. The LCP further states that widespread use of septic systems along these shorelines and within the watershed of Tomales Bay contributes to water quality problems in the bay. Sewage disposal for all shoreline lots is provided by septic systems, holding tanks, or other means. Most lots cannot support on-site sewage disposal in a manner consistent with the County's septic system standards and the standards of the Regional Water Quality Control Board. At the time of LCP certification, 740 residential units from Inverness Park to Seahaven were developed and zoning at the time would allow 420 additional units to be built. The LCP states that buildout in this area could have many significant adverse environmental impacts, including impacts to the water quality and marine resources of Tomales Bay.

The LCP contains policies on sewage disposal to ensure that adequate services will be available for new development and cumulative impacts, including water quality, will be minimized.

LUP Public Services Policy 3(a)(2) states:

Expansions or alterations. Where a coastal development permit is necessary for an enlargement or change in the type or intensity of an existing structure, the existing or enlarged septic system must meet the Minimum Guidelines of the Regional Water Quality Control Board, or the county's revised septic system code as approved by the Regional Board, before a permit for such enlargement or change can be granted.

Zoning Code Section 22.56.130(B) states in relevant part:

Septic System Standards: The following standards apply for projects which utilize septic systems for sewage disposal.

- 2) Alternate waste disposal systems shall be approved only where a public entity has formally assumed responsibility for inspecting, monitoring and enforcing the maintenance of the system in accordance with the criteria adopted by the Regional Water Quality Control Board.*
- 3) Where a coastal project permit is necessary for the enlargement or change in the type of intensity of use of an existing structure, the project's septic system must be determined consistent with the current Guidelines of the Regional Water Quality Control Board or such other program standards as adopted by the County of Marin.*

Residential septic systems are designed according to the number of bedrooms to be served. Exceeding a septic systems design capacity may result in hydraulic or nutrient overload causing the septic system to fail, and resulting in ground water and/or surface water contamination. The development authorized by CDP 250-79 included installation of a septic system to serve the approved two-bedroom residences. Although CDP 250-79 authorized the construction of a two-bedroom home, the approved septic system was designed to serve up to three bedrooms. Thus, as approved in 1979, the system would be capable of serving the future addition of a third bedroom. Both the Marin County Department of Public works and the Regional Water Quality Control Board (RWQCB) approved the system. The RWQCB approval was contingent on changing the septic system design to meet the following three conditions:

1. The design should be modified to provide an impermeable barrier to possible horizontal flow of wastewater to the proposed subdrain. The barrier should extend to a depth at least two feet below the bottom of the subdrain.
2. The down hill slope shall be modified to extend the toe of the fill to a point an additional ten feet further out, with the top of mound to be left unchanged.
3. The design should extend the french drain pass by the replacement leach field on the uphill side of the mound.

The Commission imposed these same requirements as a condition of CDP 250-79. The Commission found that as conditioned the septic system met the 1979 standards necessary to protect the water quality and biological productivity of Tomales Bay.

The existing septic system on the site is a type of system known as a "Wisconsin mound" system. Mound systems are an alternative type of septic system that are used in locations where the drainage characteristics of the site are unsuitable for use of a standard leach field, such as in areas with a shallow groundwater table or hardpan layer. Pursuant to Zoning Code Section 22.56.130(B)(2), alternate waste disposal systems such as mound systems may only be approved where inspection and monitoring is provided to ensure the system is maintained in accordance with criteria adopted by the RWQCB. Consistent with this requirement, County permits for the operation of all new mound systems require the permittee to pay the costs of regular monitoring and inspection by the County Department of Environmental Health. By such means, the County ensures that mound systems are properly maintained to protect water resources. However, such monitoring was not required in 1979, before the LCP was certified and at the time that the CDP was granted for the construction of the house and septic system. Thus, the septic system on the project site is not subject to current monitoring and inspection requirements.

Because the originally approved septic system was designed to serve an additional bedroom, the applicants are not proposing any modifications to the system as part of this permit amendment application. Consequently, the County has determined that a new operating permit is not required under the County Health Code for the proposed addition of a third bedroom (Exhibit 10). Since a County operating permit is not required for the proposed development, the County has not applied the standard procedures for mound systems to the proposed development. Thus, the County did not require the type of monitoring that is now considered standard for mound systems. However, pursuant to County Zoning Code Section 22.56.130(B)(3), to approve a coastal development permit amendment for the proposed addition, the Commission must determine that the septic system meets *current* RWQCB or County standards. These current requirements include the provisions for monitoring of alternate waste disposal systems specified under Zoning Code Section 22.56.130(B)(2). Regular inspection and monitoring to ensure that the septic system is maintained to prevent contamination of Tomales Bay with effluent from the proposed development is particularly important given the close proximity of the project site to Chicken Ranch Beach, a popular public recreation area. Failure of the applicants' septic system would not only impact the biological productivity of Tomales Bay, but would also threaten public health. For these reasons, both the San Francisco Bay RWQCB and the County Department of Environmental Health support the imposition of a monitoring requirement as a condition of this permit amendment.

Therefore, in accordance with the requirements of the LCP and as recommended by the San Francisco Bay RWQCB and the County Department of Environmental Health, **Special Condition 1** requires the applicant to provide for the regular monitoring and inspection of the

septic system for the life of the development. In accordance with this condition, the applicants must submit for the Executive Director's review and approval, and prior to issuance of the permit amendment, an Individual Wastewater System Monitoring Plan. The monitoring plan must provide for regular monitoring of the system at the applicants' expense to ensure to the satisfaction of Executive Director that wastewater generated by the development does not contaminate surface or ground waters on or off of the project site. The Commission finds that **Special Condition 1** is necessary to prevent adverse impacts to the water quality of Tomales Bay as required by the Marin County LCP for the protection of marine biological resources and human health. As conditioned, the Commission finds that the proposed development is consistent with the water quality policies of the Marin County LCP.

Any future addition to the residence or conversion of internal floor space to provide for an additional bedroom could exceed the capacity of the existing septic system resulting in significant adverse effects to Tomales Bay and public health. Under certain circumstances, such development may be exempt from the need to obtain coastal development permits pursuant to Section 30610 of the Coastal Act. Accordingly, pursuant to Section 30610 of the Coastal Act, the Commission would not normally be able to review such development to ensure that impacts to sensitive habitat and/or public health and safety are avoided.

To avoid such impacts to coastal resources from the development of otherwise exempt additions to existing residences, Coastal Act Section 30610(a) requires the Commission to specify by regulation those classes of development that involve a risk of significant adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of Regulations. Section 13250(b)(6) specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effects by indicating in the coastal development permit issued for the original structure that any future improvements would require a coastal development permit. As noted above, certain additions or improvements to the approved residence could involve a risk of adverse impacts to the water quality and biological productivity of the water of Tomales Bay. In order for the Commission to find the proposed amendment consistent with the septic system policies and zoning codes of the LCP, the Commission must ensure that future improvements to the development authorized by CDP 2-01-022 as amended, such as the conversion of the storage room to a bedroom, would require review and approval by either the Commission or the County through either a permit amendment or new permit. Therefore, in accordance with provisions of Section 13250(b)(6) of Title 14 of the California Code of Regulations, the Commission imposes **Special Condition 2** to require a coastal development permit or a permit amendment for all future development on the project site that might otherwise be exempt from coastal permit requirements. This condition will allow future development to be reviewed by the Commission or the County to ensure that future improvements will not be sited or designed in a manner that would result in significant adverse environmental impacts. **Special Condition 2** also requires recordation of a deed restriction to ensure that all future owners of the property are aware of the

requirement to obtain a permit for development that would otherwise be exempt. This requirement will reduce the potential for future landowners to make improvements to the residence without first obtaining a permit as required by this condition.

Therefore, as conditioned, the Commission finds that the proposed development is consistent with the policies of the certified LCP concerning the protection of the water quality and biological productivity of Tomales Bay.

6.4 Hazards

LCP Policy 5(a) under Hazards in the New Development and Land Use section states that an applicant for development in an area potentially subject to flood hazard shall be required to demonstrate that the area of construction is stable for development and that the development will not cause a hazard.

In the past, the site has been subject to flooding. The proposed addition will not increase the footprint of the structures, but will increase the number of bedrooms of the residence from two to three. Since the proposed development is located in a flood-prone area, there is some risk of extraordinary flooding that could result in destruction or partial destruction of the additional bedroom, bathroom, storage room and stairway or other development approved by the Commission. Given that the applicants have chosen to implement the project despite flooding risks, the applicants must assume these risks. Since the proposed development will result in an increase in the intensity of use on the site, and since the applicants have voluntarily chosen to implement the project despite any flooding risks, the Commission imposes **Special Condition 3** concerning assumption of risk, waiver of liability, and indemnity agreement.

Special Condition 3 requires the landowner to assume the risks of extraordinary flooding hazards of the property and waive any claim of liability on the part of the Commission. In this way, the applicants are notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicants to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, the condition ensures that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission. The Commission notes that the applicants have previously executed and recorded an assumption of risk against the property in conjunction with previously approved development. The newly required assumption of risk would be executed and recorded in conjunction with the currently proposed development.

The Commission thus finds that the proposed development, as conditioned, is consistent with the policies of the certified LCP regarding flooding hazards, as the proposed development will not result in the creation of any flooding hazards, as approved.

6.5 Public Access

The project site is located between the first public road and the sea. In accordance with Coastal Act Section 30604(c), development located between the first public road and the sea that is within the coastal development permit jurisdiction of a local government is subject to the coastal access policies of both the Coastal Act and the LCP.

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum public access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, the rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

The Marin County LUP for Unit 2 includes policies regarding standards for providing and maintaining public access. Policy No. 3(a)(1) in the Public Access section specifically discusses public access in the area from Tomales Bay State Park to Chicken Ranch Beach, which encompasses the subject site. This policy states that "An offer of dedication of an easement was required as a condition of permit approval by the Regional Coastal Commission for AP #112-042-03 (the subject parcel, now 112-042-07), which abuts Chicken Ranch Beach," and recommends that agricultural use of the public trust portion of AP #112-042-03, included in the offered easement, should be permitted to continue until such time as the public access offer is accepted and opened for public use.

In addition, the Marin County Zoning Code Section 22.66.130(E) states that all coastal development permits shall be evaluated to determine the project's relationship to the maintenance and provision of public access and use of coastal beaches, waters, and tide lands.

As noted above, CDP 250-79 required an offer of dedication of a public access easement, which was accepted for management in 1983 by Marin County. Subsequent to the 1990 Litigation Settlement Agreement between the applicant, the State Lands Commission, the Coastal Commission, and the County, the applicant deeded approximately one acre of the subject parcel to State Lands in fee; this portion of the parcel contained the access easement, which was thus rescinded.

In May, 2000, the Commission approved CDP 2-00-001, authorizing the Marin County Department of Parks, Open Space, and Cultural Services to construct a public access trail

adjacent to Sir Francis Drake Blvd. to provide pedestrian access from the existing road shoulder parking along Sir Francis Drake Blvd. to Chicken Ranch Beach. This trail has been completed.

The site is located between the first public road and the sea and is separated from Tomales Bay by the adjacent State Lands parcel and Chicken Ranch Beach to the east. The proposed development consists of conversion of the storage space above the existing attached garage into one bedroom with a bathroom and a separate storage room, as well as the addition of 120 square feet of storage space and a stairway. Since the proposed development, as amended, would be located adjacent to an existing access trail, would not increase significantly the demand for public access to the shoreline, and would have no other impacts on existing or potential public access, the Commission finds that the proposed development is consistent with the public access policies of the Coastal Act and the County's LCP.

6.6 Alleged Violation

Sometime in 1993, without benefit of a coastal permit, the applicants undertook development consisting of the remodeling of the storage area above the garage into two guest units; the addition of 120 square feet of storage space and a stairway; and the change in use from residential to commercial visitor-serving of the property resulting in the establishment of a three-unit visitor-serving facility. In a letter dated July 10, 2001, the applicants stated that they have ceased to operate the visitor-serving facility. In August of 2001, the applicants applied for this proposed amendment to CDP 250-79 to further modify the storage area to a bedroom with a bathroom and a separate storage room, as well as after-the-fact authorization for 120 square feet of additional storage space and a stairway.

Although development has taken place prior to submission of this permit amendment application, consideration of the application by the Commission has been based solely upon the policies of the LCP and the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit amendment does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an admission as to the legality of any development undertaken on the site without a coastal permit.

6.7 California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission incorporates its findings on conformity of the permit amendment with the certified LCP and the Coastal Act at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. The proposed development has been conditioned to be found consistent with the policies of the certified LCP and public recreation and public access policies of the Coastal Act and to minimize all adverse environmental effects. Mitigation measures have been imposed to prevent impacts related to water quality, environmentally sensitive habitat areas, and geologic hazards. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed development with the proposed amendment, as conditioned to mitigate the identified impacts, can be found consistent with Coastal Act requirements to conform to CEQA.

EXHIBITS

1. Location Map
2. Vicinity Map
3. Project site
4. Garage Structure
5. Upper Floor Plan (One bedroom with bathroom, and a storage room)
6. Lower Floor Plan Garage Structure
7. Proposed Stair/Storage addition
8. Staff Report for CDP 250-79
9. Photographs of additional storage and stairway, west and south sides of garage structure.
10. Letter from Marin County Department of Environmental Health Services

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

Marin County Certified Local Coastal Program
Coastal Permit No. 84-54/Design Review No. 84-128/ Use Permit No. 85-10
CDP File 250-79
CDP No. 2-84-09 (Cirincione-Coles)
CDP No. 2-00-01 (Marin Co. Dept. of Parks, Open Space & Cultural Services)
Litigation Settlement Agreement from 1/31/90 between CCC, State Lands Commission, County of Marin, and Cirincione-Coles.